

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DIMITRI VALERYEVICH ) Civil No. 07cv2033-L(NLS)  
TATARINOV, )  
Petitioner, )  
v. )  
SUPERIOR COURT OF THE STATE OF )  
CALIFORNIA, COUNTY OF SAN )  
DIEGO; OFFICE OF THE CHIEF )  
COUNSEL, DEPT. OF HOMELAND )  
SECURITY; U.S. ATTORNEY, )  
SOUTHERN DISTRICT; ICE )  
DETENTION & REMOVAL UNIT, )  
Respondents. )  
\_\_\_\_\_  
ORDER DENYING WITHOUT  
PREJUDICE RESPONDENT  
SUPERIOR COURT OF THE STATE  
OF CALIFORNIA, COUNTY OF  
SAN DIEGO'S MOTION TO  
DISMISS

On December 7, 2007, Respondent Superior Court of the State of California, County of San Diego (“State”) filed a Motion to Dismiss Consolidated Petition for Writ of Habeas Corpus. For the reasons which follow, the motion is **DENIED WITHOUT PREJUDICE**.

This is the State's renewed motion to dismiss. The State's initial motion to dismiss was denied as moot on December 4, 2007 because a new petition had been filed. In the December 4 order the court also admonished the State that any future motions must comply with all applicable Local Rules or Electronic Case Filing Administrative Policies and Procedures. As before, the State's renewed motion fails to comply with the requirements of Civil Local Rule 7.1

1 and with the court's directions pertaining to the lodged exhibits. Counsel is again advised that  
2 any further failure to comply may lead to penalties pursuant to Civil Local Rule 83.1.

3 The court also notes that the State labors under the assumption that the petition was filed  
4 pursuant to 28 U.S.C. § 2254. This assumption is incorrect, as the petition, since the inception  
5 of the case, has clearly been captioned as a petition brought under 28 U.S.C. § 2241.  
6 Accordingly, in any future filings, including its response to the petition, the State is instructed to  
7 direct its arguments toward the issue whether the petition meets the requirements for relief  
8 pursuant to section 2241.

9 For the foregoing reasons, the State's Motion to Dismiss Consolidated Petition for Writ of  
10 Habeas Corpus is **DENIED WITHOUT PREJUDICE**.

11 **IT IS SO ORDERED.**

12  
13 DATED: December 10, 2007

14  
15   
M. James Lorenz  
United States District Court Judge

16 COPY TO:

17 HON. NITA L. STORMES  
UNITED STATES MAGISTRATE JUDGE

18 ALL PARTIES/COUNSEL

19  
20  
21  
22  
23  
24  
25  
26  
27  
28